IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3051 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRASINH MAHAVIARSINH RANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3051 of 2002

NANAVATY ADVOCATES for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 10/07/2002

ORAL JUDGEMENT

#. Rule. Learned APP, Mr.P.R.Abichandani waives service of rule for respondent-State.

#. Mr.Abichandani, learned APP for the respondent-State conceded that the re was a bona fide mistake on the part of Mr.B.J.Shah, learned APP appearing before the Trial Court to state that the name of the accused was disclosed immediately in the FIR. In fact, the name of the accused was disclosed immediately by the complainant but in his further statement recorded on that very day i.e. on 20.10.2001, the day on which he lodged FIR about the incident which took place on previous night of 19.10.2001 at 10.30 p.m. The FIR was lodged at 2.00 a.m. at 20.10.2001 i.e. within three and half hours of the incident.

#. Learned Senior Advocate Mr.N.D.Nanavati appearing for the applicant-accused vehemently submitted that there was a total nonapplication of mind on the part of the learned Sessions Judge, while rejecting the subsequent bail application by his judgment and order dated 7.5.2002. Mr.Nanavati took me through the earlier order passed by learned Sessions Judge rejecting his bail application on 26.2.2002 before the submission of charge sheet and the subsequent order dated 7.5.2002 rejecting the bail application after the submission of charge sheet. He vehemently submitted that practically the learned Judge has reproduced in his subsequent order dated 7.5.2002 what has been stated by him in his earlier order dated 24.2.2002. Thus, he has been denied right of bail.

#. Having carefully gone through the first order of rejection dated 26.2.2002 passed by the learned Sessions Judge and subsequent rejection order dated 7.5.2002, it appears that the learned Judge has given almost same reasons in his subsequent order. However, learned Judge has also taken into consideration the submission made by learned APP, Shri B.J.Shah that after filing of the charge sheet there is no change in the circumstance. Hon'ble Supreme Court of India as well as this Court has repeatedly held that mere filing of charge sheet is not a change in circumstance. The change in the circumstance must be pointed out to the learned Judge, if there is change in the circumstance then the court has to consider the same, otherwise not.

#. However, learned Senior Advocate Mr.Nanavati vehemently submitted that in the instant case the petitioner belonging to the upper community of "Darbar" and the victim belong to Scheduled Caste, therefore, deliberately name of the petitioner-accused was later on included in the further statement of the complainant by the police. He further submitted that the investigation

in this case is not fare at all. The subsequent statements dated 21.10.2001 recorded by the police are of those persons, who are merely chance witnesses, therefore, no importance can be attached to those statements.

#. It is true that in the FIR the complainant-Bakulbhai, who is the real brother of deceased Hasmukhbhai has not referred to the name of the present applicant-accused, but it may be stated that the said FIR was recorded by the police in the mid night hours at 2.00 a.m. on 20.10.2001 i.e. within three and half hours of the incident in question, which took place on 19.10.2001 at 10.30 p.m. wherein Hasmukhbhai was murdered, for which the offence under Section 302 IPC etc. and Section 3(10) of the Atrocities Act were registered. The complainant-Bakulbhai is a real brother, therefore, one cannot say what must be the state of his mind, when he had gone to lodge FIR to the police within three and half hours of the incident. It is true that he has filed detailed FIR, but at this juncture, the court cannot overlook the fact that his further statement was recorded by the police on that very day i.e. on 20.10.2001. At that time he must have fully reconciled, therefore, he has narrated in his statement the role played by the applicant-accused with the weapon. However, at this stage on this ground it is too early for this court to come to the conclusion that the investigation was unfair. I fail to understand that why the police should take undue interest in falsely involving the accused.

#. Mr.P.R.Abichandani, learned APP has produced statement of two witnesses viz. (1) Manoj @ Akla and (2) Teja Mohan, who are the eye witnesses and actually seen the incident. They have disclosed the name of the present petitioner-accused and the role played by him at the time of incident. It is true that their statements were recorded on 21.10.2001 but at this stage it is not possible for this court to come to the conclusion that they are chance witnesses merely because their statements were recorded on 21.10.2001 one day later than the statement of the complainant. Whether they are chance witnesses or not that can be decided only after they are cross-examined.

#. Lastly, Mr.Nanavati, Senior Advocate vehemently submitted that there was no prima facie case made out against the petitioner, therefore, the accused should be released on bail. At present, looking at the material placed before me, it is not possible for this court to come to the conclusion that there was no prima facie

case. In fact strong prima facie case is there against the present applicant-accused for the offence under Section 302 IPC etc.

#. Mr.Locham, Dy.S.P., who is present before the court stated that if the petitioner-accused is released on bail there are all possibilities of he jumping the bail. He further stated that apart from the fact that the petitioner-accused is charged with serious offence like murder under Section 302 IPC, all the three accused, including the present applicant-accused were absconding for couple of months after committing murder. Therefore, notification was published declaring them absconding and a reward of Rs.10,000/= was also declared. Thereafter, with great difficulty police could arrest all the three accused, including the present accused on the highway when they were running away in the car. In my considered opinion Mr.P.R.Abichandani, learned APP rightly submitted that if the accused is released on bail then there are all chances of he being absconding. Mr.Abichandani, learned APP also rightly submitted that looking to his past antecedents that he is involved in serious offences like Section 392, 307 of IPC etc. he may even threaten prosecution witnesses, most of them belonging to Scheduled Caste community and coming from lower strata of the society and the victim and his relatives may not get true justice. I am in complete agreement with the submission made by Mr.Abichandani, learned APP that the accused is involved in serious offences like murder under Section 302 IPC, therefore, if he is enlarged on bail then either he may jump the bail or he may try to threaten the prosecution witnesses and the victim and his relatives may not get true justice.

##. In view of the above discussion, this bail petition fails and is dismissed. Rule discharged.

(B.J.Shethna, J.)
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